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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. [redacted] 13

UNITED STATES OF AMERICA, *Petitioner,*

v.

ASHBY OLIVER STEWART, *Respondent.*

Brief in Opposition to Petition For Writ of Certiorari

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 675

UNITED STATES OF AMERICA, *Petitioner,*

v.

ASHBY OLIVER STEWART, *Respondent.*

BRIEF IN OPPOSITION

To Petition for Writ of Certiorari to the Circuit Court of Appeals for the Ninth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Opinions Below

The opinion of the District Court (R. 36-43) is reported in 24 F. Supp. 145. The opinion of the Circuit Court of Appeals (R. 128-136) is reported in 106 F. 2d 405.

Jurisdiction

The judgment below was entered August 30, 1939. R. 135. Time within which the petition might be filed was extended by Mr. Justice Reed for a period of sixty days from November 30, 1939. R. 136. The petition was filed on January 26, 1940. Jurisdiction is invoked under §240(a) of the Judicial Code.

Questions Presented

1. Whether income derived from Federal farm loan bonds through the surrender of those bonds to the receiver of the issuing bank for an amount in excess of the amount paid for them, is exempt from income tax by reason of Section 26 of the Farm Loan Act of July 17, 1916 (Title 12 U. S. C. §931) exempting from tax the bonds "and the income derived therefrom."

2. Whether income derived from Federal farm loan bonds through the sale of such bonds on the market for an amount in excess of the amount paid for them, is exempt from income tax by reason of Section 26 of the Farm Loan Act.

3. Whether petitioner is estopped to assert taxability of the income involved, by reason of the representations of an agency of petitioner authorized to make such representations, on which respondent relied.

Statutes Involved

Section 26 of the Federal Farm Loan Act of July 17, 1916, c. 245, 39 Stat. 360, 380, §26, 12 U. S. C. §931, provides:

> "That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of

> section eleven and section thirteen of this Act. First mortgages executed to Federal land banks or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such *they and the income derived therefrom* shall be exempt from Federal, State, municipal and local taxation." (Italics added.)

Section 3 of the Farm Loan Act, *supra,* (12 U. S. C. §664) provides in part:

> "It shall be the duty of the Federal Farm Loan Board . . . to prepare and distribute . . . circulars . . . advising investors of the merits and advantages of farm loan bonds; . . ."

The Revenue Act of 1938, c. 289, 52 Stat. 447, 578 (12 U. S. C. §931[a]), provides:

> "Sect[illegible] 817. *Income from Obligations and Mortgages Issued by Joint-Stock Land Banks.* Notwithstanding the provisions of section 26 of the Federal Farm Loan Act, as amended, in the case of mortgages made or obligations issued by any joint-stock land bank after the date of the enactment of this Act, *all income, except interest, derived therefrom* shall be included in gross income and shall not be exempt from Federal income taxation." (Italics added.)

The Revenue Act of 1928 provided (c. 852, 45 Stat. 791, 797):

> "Section 22. (a) "'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

"(b) EXCLUSIONS FROM GROSS INCOME. . . .

"(4) TAX-FREE INTEREST.—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States or its possessions . . ."

Statement of Facts

This is an action brought in the United States District Court for the Northern District of California, Southern Division, to recover for an overpayment of taxes by respondent Stewart for the taxable year 1931. The facts found concurrently below may be summarized as follows:

Respondent, for himself and wife, during the year 1930, purchased at below par farm loan bonds issued under the Federal Farm Loan Act of 1916 by the Kansas City Joint Stock Land Bank, and in the following year, 1931, surrendered said bonds to the receiver of the issuing bank for an amount in excess of what he paid therefor, by $76,360.95, but the sale price still being below par. R. 36, 41. Respondent also, during 1930, purchased at below par bonds issued under the same act by the Bankers' Joint Stock Land Bank of Milwaukee, which in 1931 he sold for an amount in excess of what he had paid therefor by $7,915. R. 36, 41. The total gains derived from the bonds in the two transactions were $84,275.95. R. 31-32.

From the time of the passage of the Farm Loan Act in 1916, the Federal Farm Loan Board issued various circulars and bulletins to acquaint the public with the Act and with the advantages of Federal farm loan bonds, which contained statements that the bonds and their income were "free from all forms of taxation," including "income tax and all forms of State and municipal tax of every kind and character," etc. Respondent saw and studied

these and other circulars, none of which negatived or restricted the language above quoted. R. 37, 42-3. He relied upon these statements in making his purchases, reasonably believing he was purchasing securities the income from which, in case of sale or redemption, would be exempt income. R. 42, 66-7. Both issuing banks were in receivership when the bonds were purchased; no interest was being paid by either; and increment was the only form of gain which respondent had in contemplation when he made the purchase. R. 41-2.

The District Court held that the income involved was not exempt from tax, and dismissed respondent's petition. R. 35-43, 24 F. Supp. 145. The Circuit Court of Appeals reversed, R. 128-136, 106 F. 2d 405, holding that Section 26, exempting income derived from the bonds from all taxes, was as broad as the income-tax statute under which the tax had been assessed.

Argument

As is apparent from the adoption of Section 817 of the Revenue Act of 1938, *supra*, the question whether income of the kind involved in this case is expressly exempted from tax by Section 26 of the Federal Farm Loan Act has been settled prospectively from the date of the Revenue Act of 1938. The question as to whether Section 26 of the Federal Farm Loan Act was intended by Congress to exempt such profits is therefore one of diminishing importance.(1)

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(1) The diminishing importance of the question with reference to the construction of the Federal Farm Loan Act is not controverted by the suggestion of counsel for petitioner (petition, p. 4) that some other statute has used similar language, which may be governed by the decision in this case. For the question of the construction of any particular act is a matter to be established for the particular statute—each law to be construed to effectuate the intent of the lawmakers; "and this meaning in particular instances is to be arrived at not only by a consideration of the words themselves, but by considering, as well, the context, the purposes of the law, and the circumstances under which the words were employed." *Puerto Rico v. Shell Co.*, 302 U. S. 253, 258.

The conflict with the opinion of the court below acknowledged by the Eighth Circuit Court of Appeals in its decision of January 5, 1940 (*Stern Bros. & Co. v. Comm'r Int. Rev.*, 108 F. 2d 309), might be entitled to more weight in this connection were it predicated upon any serious attempt to determine the intent of Congress expressed in Section 26, which, after all, is the decisive factor in this case. Certainly the decision of the Eighth Circuit Court of Appeals wholly fails to consider the mass of evidence, set forth in the opinion of the court below and otherwise available, which shows the intent of Congress to exempt this income. Rather, it resigned to this Court a determination of the question on the ground that it "will not be put to rest until it has been decided by the Supreme Court of the United States." Petn. 10.[1]

Unless there were substantial importance in the case—as manifestly there is not in the light of the 1938 legislation—or unless there were some substantial question as to the correctness of the determination of the court below, we submit that the conflict is not, in the circumstances, one which should commend itself to solution by this Court.

We submit that there is no substantial question with respect to the proposition whether Congress intended by Section 26 of the Federal Farm Loan Act to extend an exemption to income like that taxed herein. Thus, the determination of the court below is supported by the legislative history of the act (R. 131; and see note (1), *infra* p. 11), and by consistent administrative interpretation of the taxing authorities and those administering the Farm Loan Act (R. 42). It had been ruled by the taxing authorities, for instance, with respect to more than $100,000,000.00 of income derived from farm loan bonds through their sale at a

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(1) At the argument before the Eighth Circuit Court of Appeals, counsel for the Commissioner of Internal Revenue made the *ad hominem* appeal that it was hoped that the court would afford a conflict with the decision of the Ninth Circuit in the present case so that the matter might be brought before this Court.

profit by banks of the Federal farm loan system, that such income was tax exempt by virtue of Section 26. R. 100-101. Specifically, the General Counsel of the Bureau of Internal Revenue held in an opinion that such profits constitute income derived from the bonds and therefore not taxable. R. 85-93, particularly R. 91-92. This was circulated in a letter dated May 2, 1933, to all joint stock land banks by the Federal Farm Loan Board—the agency charged with the administration of the Federal Farm Loan Act. R. 94-5. This administrative interpretation was further confirmed by entering into closing agreements with certain joint-stock land banks in 1936 and 1937, with the approval of the Commissioner of Internal Revenue and the Secretary of the Treasury, exempting from income tax gains exactly like those involved in the present case. R. 98-100. This consistent course of administrative construction, if there were any doubt as to the construction of the statute, would be persuasive as to the correctness of our contention. *Brewster v. Gage,* 280 U. S. 327, 336; *Helvering v. R. J. Reynolds Tobacco Co.,* 306 U. S. 110, 114-115; *Lincoln Chemical Co. v. Edwards,* 289 Fed. 458, 462 (C. C. A. 2d, 1923).

And this construction of the language under consideration is in complete harmony with the interpretation of such language by the courts themselves in construing acts passed at about the same period of time that the Federal Farm Loan Act was adopted. See *Eisner v. Macomber,* 252 U. S. 189, 207; *Merchants Loan and Trust Co. v. Smietanka,* 255 U. S. 509, 520 *et passim*; *Taft v. Bowers,* 278 U. S. 470; *Hays v. Gauley Mountain Coal Co.,* 247 U. S. 189, 192-3; *Doyle v. Mitchell Bros. Co.,* 247 U. S. 179, 185-187. Compare *Pollock v. Farmers Loan and Trust Co.,* 157 U. S. 429; *MacLaughlin v. Alliance Ins. Co.,* 286 U. S. 244, 249, 251; Department of Justice, *Taxation of Government Bondholders and Employees—the Immunity Rule and the 16th Amendment,* Gov. Printing Off., 1938.

The interpretation of the Federal Farm Loan Act by the administrative officials has been ratified and confirmed by Congress, not only in the passage of each Revenue Act since 1916, but also in Section 817 of the Revenue Act of 1938, quoted above, p. 3. Furthermore, the 1938 Act making gains like those here involved subject to the income tax as to obligations issued by joint stock land banks after the date of enactment of that act[1] demonstrates a clear legislative understanding[2] that the words chosen in Section 26 of the Federal Farm Loan Act exempted gains of the kind here involved—as, indeed, except for the ruling with respect to the instant case, had been the consistent understanding of all of the agencies of the government having anything to do with the interpretation of that section. Such interpretation by Congress itself is entitled to great weight. *United States v. Freeman,* 3 How. 556, 564-5; *Alexander v. Mayer, etc.,* 5 Cranch, 1, 7-8; *Matthews v. McStea,* 91 U. S. 7, 12-13; *New York, P. & N. R. Co. v. Peninsula Exchange,* 240 U. S. 34, 39; *Cope v. Cope,* 137 U. S. 682, 688; *Tiger v. Western Investment Co.,* 221 U. S. 286, 309; *First National Bank v. Missouri,* 263 U. S. 640, 658-9; *Swigart v. Baker,* 229 U. S. 187, 197; *Sarlls v. United States,* 152 U. S. 570, 576-7.

A review of exemption statutes generally demonstrates that Congress, in choosing the language it did in the Federal Farm Loan Act in 1916, clearly intended to exempt other income as well as mere interest. Thus, certain acts have limited the ex-

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(1) The Revenue Act of 1938 states that *"all income, except interest,* derived therefrom shall be included in gross income and shall not be exempt from Federal income taxation."

(2) This understanding was clearly stated by the Senate Committee on Finance, in its report. *Sen. Rep. 1567, 75th Cong., 3d Sess.,* p. 47. It was further explained for the Committee by Senator King, in offering an amendment to the section, which was accepted. 83 *Cong. Rec.* 6765; *cf. id.* p. 6504.

emption to the bonds themselves, *i. e.*, principal.[1] Other statutes, in addition to exempting the bonds themselves, have also granted an exemption to "interest."[2] Other statutes, though not dealing specifically with bonds, have exempted "income derived" from capital, surplus, franchise, reserves, etc.[3] Thus, the Federal

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(1) Act of March 14, 1900, 31 Stat. 45, 48, §11, authorizing issue of 2% consol bonds.

Act of June 28, 1902, c. 1302, 32 Stat. 481, 484, §8, authorizing 2% Panama Canal toll bonds.

Act of August 5, 1909, c. 6, 36 Stat. 11, 117, §39, authorizing 3% Panama Canal toll bonds.

Act of June 25, 1910, c. 386, 36 Stat. 814, 817, §10, providing for postal savings bonds.

(2) Act of July 14, 1870, c. 256, 16 Stat. 272, §1.

Act of December 23, 1913, c. 6, 38 Stat. 251, 269, §18, 12 U. S. C. §447, providing for issue of Treasury notes and bonds.

First Liberty Loan Act of April 24, 1917, c. 4, 40 Stat. 35, §1, 31 U. S. C. §746.

Second Liberty Loan Act of September 24, 1917, c. 56, 40 Stat. 288, 291, §7, 31 U. S. C. §747.

Third Liberty Loan Act of April 4, 1918, c. 44, 40 Stat. 502, 31 U. S. C. §747 (through amendment of Second Liberty Loan Act).

Fourth Liberty Loan Act of July 9, 1918, c. 142, §3, 40 Stat. 844, 845, 31 U. S. C. §750.

Victory Liberty Loan Act of March 3, 1919, c. 100, §1, 40 Stat. 1309, 1310, 31 U. S. C. §753(b).

(3) Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 258, §7, 12 U. S. C. §531.

Act creating Federal Deposit Insurance Corporation, June 16, 1933, as amended by Banking Act of 1935, c. 614, 49 Stat. 684, 696, §101 [§12 B (*l*) (9)], 12 U. S. C. §264 (*l*) (9), covering new banks organized by the Federal Deposit Insurance Corporation.

The Bankhead-Jones Farm Tenant Act of July 22, 1937, c. 517, 50 Stat. 522, 527, Title IV, §40(i), 7 U. S. C. §1014(i), relating to the Farmers' Home Corporation.

Act of December 6, 1937, c. 3, 51 Stat. 4, §4, amending Federal Credit Union Act of June 26, 1934, c. 750, 48 Stat. 1216, 1222, 12 U. S. C. §1768.

Federal Crop Insurance Act of February 16, 1938, c. 30, 52 Stat. 31, 75, §511 of Title V, 7 U. S. C. §1511.

Reserve Act, from which Section 26 of the Federal Farm Loan Act was taken,[1] provides:

> "Federal Reserve Banks, including the capital stock and surplus therein and the *income derived therefrom* shall be exempt from Federal, State, and local taxation, except taxes upon real estate." (Section 7; italics added.)

Obviously this language comprehends more than just interest; by virtue of it, gains and profits of every type to Federal Reserve Banks have been considered exempt.

Still other statutes, granting a similar exemption as to capital and surplus, nevertheless exempt only "interest" derived from bonds issued by the particular instrumentality.[2] It is obvious, therefore, that Congress, in choosing the language in the exemption statute here involved, chose language aptly designed to do more than have mere interest exempted. The question posed by the petition is whether the will of Congress, thus clearly ex-

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(1) Report of the United States Commission, *Sen Doc.* 380, 63rd Cong., 2d Sess., Parts I and II, p. 33; Hearings before Sub-Committee of Committees on Banking and Currency, Senate and House, on Rural Credits, 63rd Cong., 2d Sess., 1914, p. 97; *H. R. Doc.* 679, 63rd Cong., 2d Sess., p. 18.

(2) War Finance Corporation Act of April 5, 1918, 40 Stat. 506, 511, c. 45, §§16, 17, 15 U. S. C. §§344, 345.

Reconstruction Finance Corporation Act of January 22, 1932, c. 8, 47 Stat. 5, 9, §10, 15 U. S. C. §610.

Federal Home Loan Bank Act of July 22, 1932, c. 522, 47 Stat. 725, 735, §13, 12 U. S. C. §1433.

Home Owners' Loan Act of June 13, 1933, c. 64, 48 Stat. 128, 130, §4(c), 12 U. S. C. §1463(c).

United States Housing Act of 1937, c. 896, 50 Stat. 888, 890, 898, §§5(e), 20(b), 42 U. S. C. §§1405(e), 1420(b).

Federal Savings and Loan Insurance Corporation, Act of June 27, 1934, c. 847, 48 Stat. 1246, 1257, §402(e), 12 U. S. C. §1725(e).

Federal Deposit Insurance Corporation, Act of June 16, 1933, c. 89, 48 Stat. 162, 168, 177, §8 [§12B(p)], 12 U. S. C. §264(p).

Farm Credit Act of June 16, 1933, c. 98, 48 Stat. 257, 267, §63, 12 U. S. C. §1138c.

National Mortgage Associations Act of February 3, 1938, c. 13, 52 Stat. 8, 24, §8, 12 U. S. C. §1722.

pressed, and founded on considerations of policy,[1] is to be given force as Congress is clearly shown to have intended, or whether they are to be whittled away by interpretation.

The district court relied on the case of *Willcuts v. Bunn*, 282 U. S. 216. The language relied on has no reference whatever to a situation like that presented by the instant case. That case was adequately distinguished by the court below. R. 133-134. We are here concerned only with finding and applying the intent of Congress in adopting a specific exemption—not with an implied constitutional exemption as was involved in the *Bunn* case.

Furthermore, although the court below did not rule on the contention, it seems apparent that petitioner is estopped to levy the tax imposed. It has been found by the courts below that respondent relied upon the broad statements made by the Farm Credit Administration as to tax exemption of the bonds. The courts below held that respondent reasonably believed from such statements that he was purchasing securities on which the profit in case of sale was exempt. See R. 42. We concede there would be no estoppel if the agents of the United States had no authority to make the representations upon which respondent relied. See *Utah v. United States*, 284 U. S. 534, 545-546; *Utah P. & L. Co. v. United States*, 243 U. S. 389, 408-9, et seq.; *Wilber Nat. Bank v. United States*, 294 U. S. 120, 123. Here, however, there was express authority under §3 of the Federal Farm Loan Act, 12 U. S. C. §664, quoted above, p. 3.

Many cases have held the United States to be estopped on facts no more compelling than those in the instant case. *Knight*,

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(1) *Sen. Doc. No. 380*, 63rd Cong., 2d Sess., Parts I and II.

Joint Hearings Before Sub-Committee of Committees on Banking and Currency of the Senate and House of Representatives on Rural Credits, 63rd Cong., 2d Sess., pp. 97-98.

Senator Lodge, 53 *Cong. Rec.* 7128; Senator Cummins, 53 *Cong. Rec.* 7511; and various other expressions of committees, persons in charge of the bill, etc.

Adm'r v. United States, (1900), 35 C. Cls. 129, 145; *Duval, Rec'r v. United States,* (1889), 25 C. Cls. 46, 60; *Hartson v. United States,* 21 C. Cls. 451, 456; *United States v. Great No. Ry. Co.,* (8th C. C. A., 1932), 57 F. (2d) 385, 393, aff'd 287 U. S. 144; *Branson v. Wirth,* 17 Wall. 32, 42; *William C. Atwater & Co. v. United States,* (S. D. N. Y., 1936), 18 F. Supp. 564; *United States v. Bank of Metropolis,* 15 Pet. 377, 392; *Joseph Eichelberger & Co. v. Comm'r Int. Rev.,* (5th C. C. A., 1937), 88 F. (2d) 874; *Cooke v. United States,* 91 U. S. 389, 398; *Eager v. United States,* (1898), 33 C. Cls. 336, 338. Cf. *Ritter v. United States* (3d C. C. A., 1928), 28 F. (2d) 265, 267; *Woodworth v. Kales* (6th C. C. A., 1928), 26 F. (2d) 178, 180; *Lindsey v. Hawes,* 2 Black 554, 560.

The petition for certiorari should be denied.

Respectfully submitted,

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